

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT L. DYKES,

Plaintiff,

v.

THOMAS FINCO, et al.,

Defendants.

Case No. 1:18-cv-669

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants Finco and Leach moved for summary judgment on the ground that Plaintiff failed to properly exhaust his claims against them. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending the motion be granted in part and denied in part. Specifically, the Magistrate Judge determined that Grievance STF-2017-01-0045-20e does not serve to exhaust any of Plaintiff's claims (R&R, ECF No. 20 at PageID.163) and that Grievance ECF-2018-01-0313-20e serves to exhaust Plaintiff's claims against Defendant Finco, only (*id.* at PageID.164). The matter is presently before the Court on Plaintiff's two objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

In his first objection, Plaintiff does not dispute that he did not pursue Grievance STF-2017-01-0045-20e through all three steps, but he asserts that a different result is nonetheless warranted where the Magistrate Judge failed to consider (1) that he did not know who denied his requests for a religious diet; (2) that he was “on a writ ... for approximately a month”; and (3) that the issues are “non-grievable” (Pl. Obj., ECF No. 21 at PageID.166-168). Plaintiff’s objection fails to demonstrate any factual or legal error in the Magistrate Judge’s analysis or ultimate conclusion that Grievance STF-2017-01-0045-20e does not serve to exhaust any of Plaintiff’s claims. Therefore, Plaintiff’s first objection is denied.

In his second objection, Plaintiff does not dispute that he did not name Defendant Leach in his Step I Grievance ECF-2018-01-0313-20e, but he asserts that Defendant Leach should nonetheless be denied summary judgment because (1) the issues are “non-grievable”; and (2) Plaintiff “asserted the names of the Defendants in his step two appeal, and the grievance was never rejected but was heard on the merits” (Pl. Obj., ECF No. 21 at PageID.168-169). Plaintiff’s objection fails to demonstrate any factual or legal error in the Magistrate Judge’s analysis or ultimate conclusion that Grievance ECF-2018-01-0313-20e does not serve to exhaust any of Plaintiff’s claims against Defendant Leach. Therefore, Plaintiff’s second objection is also denied.

Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 21) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 20) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants’ Motion for Summary Judgment (ECF No. 15) is GRANTED IN PART and DENIED IN PART; specifically, Plaintiff’s claims against

Defendant Leach are dismissed without prejudice for failure to exhaust administrative remedies, but Plaintiff's claims against Defendant Finco go forward.

Dated: September 12, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge